IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.421 OF 1999

Shri Siraj Babu Pathan .. Appellant

Versus

Smt. Laxmibai Babu Mane .. Respondent

Mr.G.H.Keluskar for appellant

None for Respondent

CORAM : P.V.KAKADE,J.

DATE : 25TH NOVEMBER, 2004

P.C.:

1. This an appeal filed by the Appellant against the judgment and order passed by Joint District Judge, Sangli, dated 7.7.1999 allowing the appeal against the Respondent No.1 in that appeal and setting aside the order passed by Joint Civil Judge, Junior Division, Sangli dated 22.11.1983 dismissing the suit of the plaintiff.

2. I heard the learned advocate for the appellant. Perused the record. None appears for the respondent.

3. Original Plaintiff - Laxmibai Babu Mane and the original defendant Balkabai Govind Mane were related inter-se. One Narayan Mane had one son by name Govinda, who died on 24.5.1959. Balkabai (defendant No.2) was the wife of Govinda Narayan Mane. Govinda and Balkabai had only one son by name Babu Govinda Mane. Admittedly, he died on 14.3.1949. Laxmibai, the appellant in the lower appeal court, is the wife of said Babu. Marriage of Babu and Laxmibai took place in 1942. Family consisting of the plaintiff, her husband Babu, Babu's mother Balkabai (defendant No.2) and her husband Govinda. Govind Narayan Mane is step brother by name Gopal Narayan Mane. At that time he was living separate from Govinda. It was contended that the property belonging to Mane family were acquired by the then erstwhile State of Sangli and therefore they were living separate. The amount of compensation received on account of acquisition of land taken for the purpose of road widening was disbursed equally by Gopal and Govinda. It was the case of the plaintiff, her

father-in-law Govinda was working as a compounder in Government Hospital. She alleged that the house property was purchased by Govinda, particularly from his own savings and particularly from the share of compensation received from the Sansthan. According to the Plaintiff, Govinda had purchased the said property Benami for a consideration of Rs.300/= from one Rama Govind Gavandi. Govinda purchased suit house in the name of his wife so as to avoid his step brother Gopal Narayan Mane, claiming any share in the suit property in future. It is the plaintiff's case that the defendant no.2 Balkabai on 3.8.1979 without obtaining prior consent sold the suit house for a compensation of Rs.20,000/= to defendant no.1. Plaintiff after having got the knowledge of this fact, issued notice to the defendant no.1 informing that the transaction executed between the them was not binding on her and she has undivided 1/2 share in the property. she demanded 1/2 share in the property of defendant no.1. As the demand was refused the suit came to be filed against the defendants.

4. The defendant no.1 challenged the suit, however, defendant no.2 did not challenge the suit at any time.

The defendant no.1, who is present appellant, took the stand that he was a bonafide purchaser for value without notice. The learned trial judge came to the conclusion after hearing both the parties that it was proved by appellant-defendant no.1 that he was bonafide purchaser for value without notice and as such the suit came to be dismissed. Appeal was carried out to the District Court. The learned Addl. Joint District Judge after hearing the parties allowed the appeal setting aside the order of the lower court and decreed the suit holding that the plaintiff was entitled to half share and separate possession in the suit house. Alternatively it was held that if the property is not being conveniently divided, then the appellant was entitled to cash amount equivalent to her half share in the suit property. In view of this order the original defendant no.1 has preferred the present appeal.

5. At the outset it may be noted that the only question involved in this matter is whether the defence contemplated under Section 41 of the Transfer of Property Act is available to defendant no.1 or not. the learned appeal court judge has evaluated the issue and come to the conclusion that the provisions under Section

41 of the Transfer of Property Act could not be applicable to the real owner of the property and this proposition is based on the ruling of this Court in the case of Bajrang @ Hanumant Tatyaba Kakade and anr. vs. Babubai w/o Baburao Pujari and Ors. - 1997 (2) Maharashtra Law Journal page 855. Perusal of the entire record including the judgment and reasoning adopted by the lower court, there is no doubt whatsoever that the issue was correctly appreciated and therefore, no substantial question of law is left to be answered or requires any consideration in the present appeal.

6. In the result the appeal stands dismissed in limine. Consequently the Civil application also stands dismissed accordingly.